

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of:

**No. 11A-41535-MDX**

3 **JUSTIN LEE, M.D.,**

4 Holder of License No. 41535  
5 for the Practice of Allopathic Medicine  
6 in the State of Arizona,

Respondent.

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
FOR REVOCATION**

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8 On August 10, 2011, this matter came before the Arizona Medical Board  
9 ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ")  
10 Diane Mihalsky's proposed Findings of Fact and Conclusions of Law and  
11 Recommended Order. Dr. Justin Lee ("Respondent") was/was not present. Assistant  
12 Attorney General Camila Alarcon represented the State. Christopher Munns, Assistant  
13 Attorney General with the Solicitor General's Section of the Attorney General's Office,  
14 was available to provide independent legal advice to the Board.

15 The Board, having considered the ALJ's decision and the entire record in this  
16 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

17 **FINDINGS OF FACT**

18 1. The Arizona Medical Board ("the Board") is the duly constituted authority for  
19 licensing and regulating the practice of allopathic medicine in the State of Arizona.

20 2. In January 2009, the Board issued of License No. 41535 to Justin Lee, M.D.  
21 ("Respondent") for the practice of allopathic medicine in the State of Arizona.

22 3. Respondent practiced as a pediatric anesthesiologist and held privileges at  
23 several hospitals in the Phoenix metropolitan area, including Phoenix Children's Hospital.

24 4. On August 14, 2009, an agent for the Federal Bureau of Investigation ("FBI") in  
25 Los Angeles, California notified the Board that Respondent had been arrested for his  
26 alleged involvement in a child exploitation enterprise. Respondent's employer, Valley  
27 Anesthesia Consultants, also notified the Board of Respondent's arrest.

1           5. The Board obtained the criminal complaint in United States District Court for  
2 the Central District of California Case No. 09-68(A) ("Case No. 09-68(A)") issued on  
3 August 17, 2009. The initial complaint charged Respondent and other co-defendants  
4 with engaging in a child exploitation enterprise in violation of 18 U.S.C. § 2252A(g),  
5 including transportation of child pornography in violation of 18 U.S.C. § 2252A(1),  
6 distribution and receipt of child pornography, in violation of 18 U.S.C. § 2252A(2),  
7 advertising, promoting and presenting child pornography, in violation of 18 U.S.C. §  
8 2252A(a)(3)(B), and possession of child pornography, in violation of 18 U.S.C. §  
9 2252A(a)(5)(B).

10           6. According to the criminal complaint, the FBI's investigation began with agents  
11 monitoring an on-line website called "Lost Boy," and resulted in FBI agents obtaining pay  
12 pal records and online addresses of men involved in the website. The subjects of the  
13 investigation included Respondent, who used the member name, "HarryPotter," on the  
14 Lost Boy website. The FBI confiscated Respondent's computer at his Phoenix residence  
15 and obtained evidence of his involvement in the Lost Boy website. After agents arrested  
16 Respondent in Phoenix, the FBI transferred him to California to be criminally charged.

17           7. The Board sent out an all-hospital notification of Respondent's alleged  
18 misconduct. On August 25, 2009, Respondent signed an Interim Consent Agreement for  
19 Practice Restriction, agreeing to refrain from practicing medicine until the Board granted  
20 him permission to resume his practice, pending the outcome of the criminal charges.

21           8. On September 22, 2009, a first superseding criminal indictment was filed in  
22 Case No. 09-68(A). The superseding criminal indictment alleged that Respondent, under  
23 the screen name, "HarryPotter," joined Lost Boy on or about August 16, 2008, and after  
24 joining, made approximately 39 public posts to other message board users.

25           9. Count 2 of the superseding indictment in Case No. 09-68(A) charged  
26 Respondent with knowingly making, printing, or publishing a notice or advertisement  
27

1 offering visual depictions of minors engaging in sexually explicit conduct, in violation of 18  
2 U.S.C. § 2251(d)(1)(A), and conspiring to knowingly mail, receive, distribute, reproduce,  
3 advertise, sell, possess, or access child pornography, in violation of 18 U.S.C. §  
4 2252A(b)(1) and (b)(2).

5 10. On or about September 7, 2010, Respondent pled guilty to Count 2 of the first  
6 superseding criminal indictment in Case No. 09-68(A). According to the Change of Plea  
7 Criminal Minutes, Respondent was scheduled to be sentenced on March 24, 2011.<sup>1</sup>

8 11. The charges to which Respondent pled guilty are felonies.

9 12. The Board referred the complaint to the Office of Administrative Hearings, an  
10 independent agency, for an evidentiary hearing.

11 13. On April 12, 2011, the Board issued a Complaint and Notice of Hearing in this  
12 matter, charging a violation of A.R.S. § 32-1401(27)(d) and setting a hearing on June 20,  
13 2011. The Board mailed a copy of the Complaint and Notice of Hearing to Respondent at  
14 his last known address.

15 14. A hearing was held on the date and time set forth in the Complaint and Notice  
16 of Hearing, June 20, 2011, at 8:00 a.m.

17 15. Respondent did not request to appear telephonically at the hearing.  
18 Respondent did not appear personally or through an attorney, did not contact the Office  
19 of Administrative Hearings to request a continuance or that the time for the hearing be  
20 delayed, and did not present any evidence to defend his license to practice allopathic  
21 medicine in Arizona.

22 16. The Board presented the testimony of Danielle "Elle" Steger, the investigator  
23 assigned to the case, and submitted six exhibits to establish the facts set forth above.

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27 <sup>1</sup> The record in this matter does not include Respondent's sentence.

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2 **CONCLUSIONS OF LAW**

3 1. The Complaint and Notice of Hearing that the Board mailed to Respondent at  
4 his last known address was reasonable and Respondent is deemed to have received  
5 notice of the hearing.<sup>2</sup>

6 2. The Board has jurisdiction to consider this complaint and to discipline  
7 Respondent's license to practice allopathic medicine in Arizona.<sup>3</sup>

8 3. The Board bears the burden of proof and must establish cause to discipline  
9 Respondent's license to practice allopathic medicine in Arizona by a preponderance of  
10 the evidence.<sup>4</sup>

11 4. "A preponderance of the evidence is such proof as convinces the trier of fact  
12 that the contention is more probably true than not."<sup>5</sup>

13 5. The Board established that Respondent committed unprofessional conduct  
14 as defined by A.R.S. § 32-1401(27)(d), by committing a felony, as conclusively  
15 established by his plea agreement in Case No. 09-68(A).

16 6. The legislature created the Board to protect the public.<sup>6</sup> Given the egregious  
17 nature of the felony that Respondent committed, protection of the public requires that the  
18 Board revoke Respondent's license to practice allopathic medicine.

19 **ORDER**

20 Based on the foregoing, it is ordered that License No. 41535 for the practice of  
21 allopathic medicine in Arizona previously issued to Respondent Justin Lee, M.D. is  
22 revoked.

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24 <sup>2</sup> See A.R.S. §§ 41-1092.04; 41-1092.05(D).

25 <sup>3</sup> See A.R.S. § 32-1451.

26 <sup>4</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

27 <sup>5</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

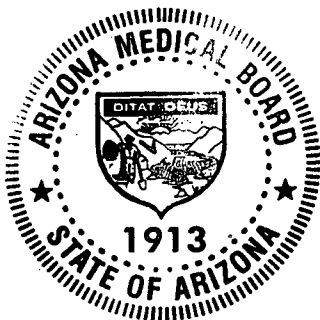
<sup>6</sup> See Laws 1992, Ch. 316, § 10.

**RIGHT TO PETITION FOR REHEARING OR REVIEW**

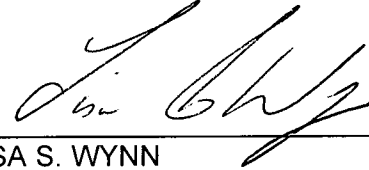
Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Done this day, August 11<sup>TH</sup>, 2011.



THE ARIZONA MEDICAL BOARD

By   
\_\_\_\_\_  
LISA S. WYNN

Executive Director

**ORIGINAL** of the foregoing filed  
this 11<sup>th</sup> day of August, 2011 with:

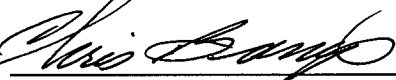
Arizona Medical Board  
9545 E. Doubletree Ranch Road  
Scottsdale, AZ 85258

**COPY** of the foregoing mailed  
this 11<sup>th</sup> day of August, 2011 to:

Justin M. Lee, M.D.  
Address of Record

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Arizona Medical Board Staff